

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

No. CR 03-2072 JB

ANTONIUS MARIA HEIJNEN,
ELIZABETH A. PERRAGLIO,
MARIA DEL CARMEN PATRON
RODRIGUEZ,

Defendants.

MEMORANDUM OPINION AND ORDER

THIS MATTER comes before the Court on Defendant Antonius Maria Heijnen's Motion/Request for Court Opinion and Memorandum on matters of venue, filed October 5, 2004 (Doc. 41). The issue is whether the Court should issue an opinion to Heijnen about where to file a case he is preparing. Because giving such advice would be to issue an advisory opinion, and because the United States Constitution prohibits federal courts from giving advisory opinions, the Court will deny Heijnen's motion.

PROCEDURAL BACKGROUND

Heijnen represents that he is preparing litigation under the Freedom of Information Act ("FOIA") and wishes to obtain a court opinion regarding venue so that he can initiate the case in the proper court "for the purpose of efficient jurisprudence." Specifically, Heijnen asks the Court: "Is this (legislative Article IV) US District Court the proper forum for litigation under FOIA, or would such litigation have to be initiated in a (constitutional Article III) district court of the United States?" Heijnen states that he brings this question to the Court because he does not want to burden the Court

unnecessarily and does not want to initiate FOIA litigation in this Court when he should have initiated the litigation in a United States District Court.

The United States opposes Heijnen's motion. The United States argues that the Court should deny Heijnen's motion because it requests an advisory opinion.

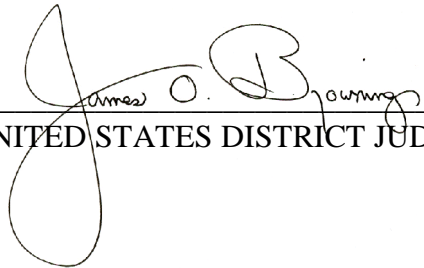
ANALYSIS

Heijnen in his motion asks the Court to tell him whether he can initiate litigation in this Court pursuant to FOIA or whether he needs to file in a different court. Heijnen contends that it is in the best interest of efficient jurisprudence that the Court answer his question as soon as possible. While the Court will decline to answer his question for the reasons stated herein, the Court notes that Heijnen premises his question on an erroneous legal assumption. This Court is not a "legislative Article IV court," but is a United States District Court that Congress established under § 8 of Article I and under § 1 of Article III of the Constitution. See 28 U.S.C. § 132. Thus, this Court is an Article III court.

Heijnen asks the Court to opine whether this is the proper court in which to initiate FOIA litigation because he does not want to burden this Court unnecessarily should it turn out to be the wrong venue. Heijnen is asking for an advisory opinion whether the Court would grant a motion to dismiss for lack of venue if he were to initiate FOIA litigation in this Court. Federal Courts have consistently refused to give such "advance expressions of legal judgment upon issues which remain unfocused because they are not pressed before the Court with that clear concreteness provided when a question emerges precisely framed and necessary for decision from a clash of adversary argument exploring every aspect of a multifaced situation embracing conflicting and demanding interests." United States v. Fruehauf, 365 U.S. 146, 157 (1961). "The rule against advisory opinions was

established as early as 1793 and the rule has been adhered to without deviation.” Flast v. Cohen, 392 U.S. 83, 96 n.14 (1968) (citing United States v. Fruehauf, 365 U.S. at 157). See U.S. Nat’l Bank of Ore. v. Indep. Ins. Agents, 508 U.S. 439, 446 (1993); Preiser v. Newkirk, 422 U.S. 395, 401 (1975). Accordingly, the Court should not issue the advisory opinion that Heijnen seeks.

IT IS ORDERED that Defendant Antonius Maria Heijnen’s Motion/Request for Court Opinion and Memorandum on matters of venue is denied.


UNITED STATES DISTRICT JUDGE

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